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Venere Net, LLC, and Expedia Australia Investments Pty Ltd.*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BUCKEYE TREE LODGE AND SEQUOIA
VILLAGE INN, LLC, ET AL.,

Plaintiffs,

v.

EXPEDIA, INC., HOTELS.COM, L.P.,
HOTELS.COM GP, LLC, ORBITZ, LLC,
VENERE NET S.R.L DBA VENERE NET, LLC,
and EXPEDIA AUSTRALIA INVESTMENTS
PTY LTD.,

Defendants.

Civil Case No.: 16-cv-04721-VC

**DEFENDANTS' ANSWER TO SECOND
AMENDED CONSOLIDATED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Defendants Expedia, Inc., Hotels.com, L.P., Hotels.com GP, LLC, Orbitz, LLC, Venere Net S.r.l., and Expedia Australia Investments Pty Ltd. (collectively, the “Expedia Entities”) answer Plaintiffs’ First Amended Consolidated Class Action Complaint (“Complaint”) and provide affirmative defenses to the allegations in the Complaint as follows. Unless specifically admitted, the Expedia Entities deny all allegations and claims contained in the Complaint.

ANSWER

The Expedia Entities admit that Buckeye Tree Lodge and Sequoia Village Inn, LLC (“Buckeye”), 2020 O Street Corporation, Inc. d/b/a The Mansion on O Street (“The Mansion”), Prospect Historic Hotel (“Prospect”), and Shiloh Morning Inn, LLC (“Shiloh”) purport to bring this action as stated in the preamble to the Complaint.

I. NATURE OF ACTION

1. The Expedia Entities admit that Expedia, Inc. operates the websites Expedia.com and Travelocity.com; Orbitz, LLC operates the website Orbitz.com; Hotels.com, L.P. operates the website Hotels.com (collectively, the “Websites”). The Expedia Entities deny the remaining allegations set forth in Paragraph 1.

2. The Expedia Entities deny the allegations in Paragraph 2.

3. The Expedia Entities deny the allegations in Paragraph 3.

4. The Expedia Entities deny the allegations in Paragraph 4.

5. The Expedia Entities deny the allegations in Paragraph 5.

6. The Expedia Entities admit that Plaintiffs purport to bring this action pursuant to the laws cited in Paragraph 6. The Expedia Entities otherwise deny the allegations set forth in Paragraph 6, deny that the Expedia Entities have violated any law or other regulation, and deny that Plaintiffs are entitled to any relief.

II. JURISDICTION

7. Paragraph 7 contains a conclusion of law to which no response is required.

8. Paragraph 8 contains a conclusion of law to which no response is required.

9. Paragraph 9 purports to contain conclusions of law to which no response is required.

To the extent a response is required, the Expedia Entities deny knowledge or information sufficient to

1 form a belief as to the truth or falsity of the allegations about Buckeye, The Mansion, Prospect, and
2 Shiloh. The Expedia Entities admit that Expedia, Inc. is incorporated in Washington; Hotels.com, L.P. is
3 a Texas limited partnership; Hotels.com GP, LLC is a Texas limited liability company; and Orbitz, LLC
4 is a Delaware limited liability company. The Expedia Entities deny all remaining allegations in
5 Paragraph 9.

6 10. Paragraph 10 purports to contain a conclusion of law to which no response is
7 required. The Expedia Entities deny all remaining allegations in Paragraph 10.

8 11. The Expedia Entities deny knowledge or information sufficient to form a belief as to
9 the truth or falsity of the allegations set forth in Paragraph 11.

10 12. The Expedia Entities deny knowledge or information sufficient to form a belief as to
11 the truth or falsity of the allegations set forth in Paragraph 1.

12 13. The Expedia Entities deny knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations set forth in Paragraph 13.

14 14. The Expedia Entities deny knowledge or information sufficient to form a belief as to
15 the truth or falsity of the allegations set forth in Paragraph 14.

16 15. The Expedia Entities admit that Expedia, Inc. is a Washington corporation with its
17 headquarters in Bellevue, Washington. To the extent not expressly admitted, the Expedia Entities deny
18 the allegations set forth in Paragraph 16.

19 16. The Expedia Entities admit that Hotels.com, L.P. is a Texas limited partnership with
20 its headquarters in Dallas, Texas. To the extent not expressly admitted, the Expedia Entities deny the
21 allegations set forth in Paragraph 16.

22 17. The Expedia Entities admit that Hotels.com GP, LLC is a Texas limited liability
23 company. To the extent not expressly admitted, the Expedia Entities deny the allegations set forth in
24 Paragraph 17.

25 18. The Expedia Entities admit that Orbitz, LLC is a Delaware limited liability company
26 with its headquarters in Chicago, Illinois. To the extent not expressly admitted, the Expedia Entities
27 deny the allegations set forth in Paragraph 18.

28 19. The Expedia Entities deny all allegations set forth in Paragraph 19.

20. The Expedia Entities deny all allegations set forth in Paragraph 20.

21. The Expedia Entities deny all allegations set forth in Paragraph 21.

III. STANDING

22. Paragraph 22 purports to contain a conclusion of law to which no response is required. To the extent a response is required, the Expedia Entities deny the allegations in Paragraph 22.

IV. FACTUAL BACKGROUND

23. The Expedia Entities deny the allegations in the first sentence of Paragraph 23. The Expedia Entities admit that the Hôtel de la Place du Louvre, the Château du Guilguiffin, and the Synhorcat (collectively, “French Lawsuit Plaintiffs”) brought suit against Expedia, Inc., Expedia France, Hotels.com, L.P., TripAdvisor, LLC, TripAdvisor Limited, TripAdvisor France, VacationSpot S.L., and WWTE Travel Limited (collectively, “French Lawsuit Defendants”) before the Tribunal de Commerce de Paris. The Expedia Entities state that the judgment of the Tribunal de Commerce de Paris speaks for itself and denies any allegations that are inconsistent therewith. The Expedia Entities admit that the French Lawsuit Plaintiffs alleged that the French Lawsuit Defendants engaged in misleading business practices. Specifically, the Expedia Entities admit that the French Lawsuit Plaintiffs alleged that the French Lawsuit Defendants distributed misleading information about the availability of hotels, promotional offers, and contact information, including telephone numbers. The Expedia Entities further admit that French Lawsuit Defendants were jointly ordered to pay €284,955.54 to the Synhorcat; €58,919 to Hôtel de la Place du Louvre; €23,261 to the Château du Guilguiffin; €20,000 to each of the French Lawsuit Plaintiffs for costs pursuant to Article 700 of the French Code of Civil Procedure; and €92.07 in litigation costs. The Expedia Entities deny all remaining allegations in Paragraph 23.

24. In response to Paragraph 24, the Expedia Entities state that the judgment of the Tribunal de Commerce de Paris speaks for itself and denies any allegations that are inconsistent therewith. The Expedia Entities admit that the Minister of Economy, Finance and Industry intervened in the action and alleged that certain business practices by the French Lawsuit Defendants described in the Minister’s administrative investigation report were misleading. The Expedia Entities further admit that French Lawsuit Defendants were jointly ordered to pay €284,955.54 to the Synhorcat; €58,919 to Hôtel de la Place du Louvre; €23,261 to the Château du Guilguiffin; €20,000 to each of the French Lawsuit

1 Plaintiffs for costs pursuant to Article 700 of the Code of Civil Procedure; and €292.07 in litigation
2 costs. The Expedia Entities lack knowledge or information sufficient to identify the source of the
3 quotation in the Tnooz article about employee training and therefore deny it. The Expedia Entities deny
4 all remaining allegations in Paragraph 24.

5 25. In response to Paragraph 25, the Expedia Entities state that the judgment of the
6 Tribunal de Commerce de Paris speaks for itself and denies any allegations that are inconsistent
7 therewith. The Expedia Entities admit that the French Lawsuit Defendants produced affidavits
8 explaining that they had changed phrases on their French websites related to hotel availability, replacing
9 them with wording indicating that availability is related to the reservation system of the site or its
10 partners. The Expedia Entities admit that the Tribunal de Commerce de Paris found that the
11 modifications were compliant with the French Consumer Code. The Expedia Entities further state that
12 the Tribunal de Commerce de Paris found that the contact information on the French Lawsuit
13 Defendants' websites, including telephone numbers, was not a misleading business practice. The
14 Expedia Entities lack knowledge or information sufficient to identify the source of the quote in the
15 Tnooz article about employee training and therefore deny it. The Expedia Entities deny all remaining
16 allegations in Paragraph 25.

17 26. In response to Paragraph 26, the Expedia Entities state that the news articles and
18 reports speak for themselves. To the extent the statements in the news articles and reports are offered to
19 prove the truth of the matter asserted, the Expedia Entities deny the allegations in Paragraph 26. The
20 Expedia Entities lack knowledge or information sufficient to verify the statements attributed to Expedia
21 regarding correction of coding errors and purported repeated complaints, and therefore deny them. The
22 Expedia Entities deny all remaining allegations in Paragraph 26.

23 27. The Expedia Entities admit that Expedia, Inc. operates the websites Expedia.com and
24 Travelocity.com; Orbitz, LLC operates the website Orbitz.com; and Hotels.com, LP operates the
25 website Hotels.com. The Expedia Entities deny the remaining allegations in Paragraph 27.

26 28. The Expedia Entities admit that Expedia.com, Hotels.com, Orbitz.com, and
27 Travelocity.com offer travel services to consumers throughout the United States. The Expedia Entities
28 deny all remaining allegations in Paragraph 28.

29. The Expedia Entities deny the allegations in Paragraph 29.

30. The Expedia Entities admit that Buckeye does not have a contract with Expedia, Inc. The Expedia Entities deny all remaining allegations in Paragraph 30.

31. The Expedia Entities deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 31.

32. The Expedia Entities deny the allegations set forth in Paragraph 32.

33. The Expedia Entities deny the allegations set forth in Paragraph 33.

34. The Expedia Entities deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 34.

35. The Expedia Entities deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 35.

36. The Expedia Entities deny the allegations set forth in the first sentence of Paragraph 36. The Expedia Entities admit that search results on the Websites include hotels with which Expedia, Inc. has contracts. The Expedia Entities deny all remaining allegations set forth in Paragraph 36.

37. The Expedia Entities deny all allegations set forth in Paragraph 37.

38. The Expedia Entities deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first and second sentences in Paragraph 38. The Expedia Entities deny all remaining allegations in Paragraph 38.

39. The Expedia Entities admit that Expedia, Inc. communicated with The Mansion in 2016, and that The Mansion no longer appears on websites operated by Expedia Entities. The Expedia Entities deny all remaining allegations set forth in Paragraph 39.

40. The Expedia Entities deny all allegations in Paragraph 40.

41. The Expedia Entities deny all allegations in Paragraph 41.

42. The Expedia Entities deny all allegations in Paragraph 42.

43. The Expedia Entities deny all allegations in Paragraph 43.

44. The Expedia Entities admit that Buckeye does not have a contract with Expedia, Inc. The Expedia Entities deny all remaining allegations in Paragraph 44.

45. The Expedia Entities deny all allegations in Paragraph 45.

1 46. The Expedia Entities deny all allegations in Paragraph 46.

2 47. The Expedia Entities admit that consumers may enter prospective travel dates to
3 search for room availability on the Websites. The Expedia Entities deny all remaining allegations set
4 forth in Paragraph 47.

5 48. The Expedia Entities deny all allegations set forth in Paragraph 48.

6 49. The Expedia Entities deny the allegations set forth in Paragraph 49.

7 50. The Expedia Entities admit that the phone numbers listed in the search results on the
8 Websites are associated with and operated by the Expedia Entities. The Expedia Entities admit that
9 before Expedia Inc. acquired Orbitz, LLC, the phone numbers on Orbitz.com were associated with and
10 operated by Orbitz Worldwide LLC. The Expedia Entities deny all remaining allegations set forth in
11 Paragraph 50.

12 51. The Expedia Entities deny the allegations set forth in Paragraph 51.

13 52. The Expedia Entities deny the allegations set forth in Paragraph 52.

14 53. The Expedia Entities deny the allegations set forth in Paragraph 53.

15 54. The Expedia Entities admit that the Websites are advertised on a social media
16 platform that uses pixel events to create advertisements. The Expedia Entities deny all remaining
17 allegations set forth in Paragraph 54.

18 55. The Expedia Entities deny all allegations set forth in Paragraph 55.

19 56. The Expedia Entities deny all allegations set forth in Paragraph 56.

20 57. The Expedia Entities deny all allegations set forth in Paragraph 57.

21 58. The Expedia Entities state that the statements allegedly made on the Internet and
22 quoted in Paragraph 58 speak for themselves. To the extent the statements are offered to prove the truth
23 of the matter asserted, the Expedia Entities deny the allegations in Paragraph 58.

24 59. The Expedia Entities admit that Plaintiffs purport to represent a putative class and
25 subclass as Plaintiffs have defined them in Paragraph 59. To the extent not expressly admitted, the
26 Expedia Entities deny the allegations set forth in Paragraph 59 and deny that Plaintiffs' claims may
27 properly be brought on behalf of the putative class.
28

1 60. The Expedia Entities admit that Plaintiffs purport to represent a class for the period
2 as stated in Paragraph 60. The Expedia Entities deny that Plaintiffs' claims may properly be brought on
3 behalf of the putative class, and therefore deny any allegations set forth in Paragraph 60.

4 61. The Expedia Entities admit that Plaintiffs purport to exclude from their putative class
5 Defendants, their corporate parents, subsidiaries and affiliates, officers and directors, any entity in which
6 any Defendant has a controlling interest, and the legal representatives, successors, or assigns of any such
7 excluded persons or entities, and Plaintiffs' attorneys. The Expedia Entities deny that Plaintiffs' claims
8 may properly be brought on behalf of the putative class, and therefore deny any allegations set forth in
9 Paragraph 61.

10 62. Paragraph 62 purports to contain conclusions of law to which no response is
11 required. To the extent a response is required, the Expedia Entities deny the allegations set forth in
12 Paragraph 62.

13 63. Paragraph 63 contains conclusions of law to which no response is required. To the
14 extent a response is required, the Expedia Entities deny the allegations set forth in Paragraph 63.

15 64. Paragraph 64 contains conclusions of law to which no response is required. To the
16 extent a response is required, the Expedia Entities deny the allegations set forth in Paragraph 64.

17 65. Paragraph 65 contains conclusions of law to which no response is required. To the
18 extent a response is required, the Expedia Entities deny the allegations set forth in Paragraph 65.

19 66. Paragraph 66 contains conclusions of law to which no response is required. To the
20 extent a response is required, the Expedia Entities deny the allegations set forth in Paragraph 66.

21 67. The Expedia Entities incorporate by reference each of their preceding responses in
22 answer to Paragraph 67.

23 68. Paragraph 68 contains conclusions of law to which no response is required. To the
24 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 68.

25 69. Paragraph 69 contains conclusions of law to which no response is required. To the
26 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 69.

27 70. Paragraph 70 contains conclusions of law to which no response is required. To the
28 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 70.

1 71. Paragraph 71 contains conclusions of law to which no response is required. To the
2 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 71.

3 72. Paragraph 72 contains conclusions of law to which no response is required. To the
4 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 72.

5 73. Paragraph 73 contains conclusions of law to which no response is required. To the
6 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 73 and deny
7 that Plaintiffs are entitled to any relief.

8 74. Paragraph 74 contains conclusions of law to which no response is required. To the
9 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 74 and deny
10 that Plaintiffs are entitled to any relief.

11 75. The Expedia Entities incorporate by reference each of their preceding responses in
12 answer to Paragraph 75.

13 76. Paragraph 76 contains conclusions of law to which no response is required. To the
14 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 76.

15 77. Paragraph 77 contains conclusions of law to which no response is required. To the
16 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 77.

17 78. Paragraph 78 contains conclusions of law to which no response is required. To the
18 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 78.

19 79. Paragraph 79 contains conclusions of law to which no response is required. To the
20 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 79.

21 80. Paragraph 80 contains conclusions of law to which no response is required. To the
22 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 80.

23 81. Paragraph 81 contains conclusions of law to which no response is required. To the
24 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 81 and deny
25 that Plaintiffs are entitled to any relief.

26 82. Paragraph 82 contains conclusions of law to which no response is required. To the
27 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 82 and deny
28 that Plaintiffs are entitled to any relief.

1 83. The Expedia Entities incorporate by reference each of their preceding responses in
2 answer to Paragraph 83.

3 84. Paragraph 84 contains conclusions of law to which no response is required. To the
4 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 84.

5 85. Paragraph 85 contains conclusions of law to which no response is required. To the
6 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 85.

7 86. Paragraph 86 contains conclusions of law to which no response is required. To the
8 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 86.

9 87. Paragraph 87 contains conclusions of law to which no response is required. To the
10 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 87 and deny
11 that Buckeye is entitled to any relief.

12 88. Paragraph 88 contains conclusions of law to which no response is required. To the
13 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 88 and deny
14 that Buckeye is entitled to any relief.

15 89. The Expedia Entities incorporate by reference each of their preceding responses in
16 answer to Paragraph 89.

17 90. Paragraph 90 contains conclusions of law to which no response is required. To the
18 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 90.

19 91. Paragraph 91 contains conclusions of law to which no response is required. To the
20 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 91.

21 92. Paragraph 92 contains conclusions of law to which no response is required. To the
22 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 92.

23 93. Paragraph 93 contains conclusions of law to which no response is required. To the
24 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 93 and deny
25 that Buckeye is entitled to any relief.

26 94. Paragraph 94 contains conclusions of law to which no response is required. To the
27 extent a response is required, the Expedia Entities deny all allegations set forth in Paragraph 94 and deny
28 that Buckeye is entitled to any relief.

1 the Websites, had actual and/or constructive knowledge of the circumstances on which the Amended
2 Complaint is based. The Mansion, Shiloh, Prospect and putative class members that granted the Expedia
3 Entities the right to display their names on the Websites, or granted third-parties the right to grant
4 Expedia Entities the right to display their names on the Websites, expressly and/or impliedly accepted
5 those circumstances and/or ratified the conduct of which they now complain, and as a result, are barred
6 from any recovery.

7 **SECOND DEFENSE**

8 **Unclean Hands**

9 101. Putative class members that granted the Expedia Entities the right to display their
10 names and availability on the Websites, or granted third-parties the right to grant Expedia Entities the
11 right to display their names and availability on the Websites, and promised, but failed, to make all
12 unbooked rooms available for display on and booking through websites including the Expedia Entities'
13 websites (i.e., last room availability) caused the harm of which they now complain and are barred from
14 recovering resulting damages, if any.

15 **THIRD DEFENSE**

16 **Set-Off**

17 102. Putative class members that contracted with the Expedia Entities to display their
18 availability on the Websites and promised, but failed, to make all unbooked rooms available for display
19 on and booking through the Expedia Entities' websites (i.e., last room availability) caused the harm of
20 which they now complain. As a result, any purported harm to these properties should be off-set against
21 damages for breach of contract.

22 **FOURTH DEFENSE**

23 **Failure to Mitigate**

24 103. Plaintiffs' claimed damages, if any, are not recoverable because Plaintiffs have
25 failed to mitigate or avoid said damages. Similarly, members of the putative class that Plaintiffs seek to
26 represent failed to mitigate their claimed damages, if any.

FIFTH DEFENSE

Statute of Limitations

104. California's Unfair Competition Law is subject to a four-year statute of limitations. Cal. Bus. & Prof. Code § 17208. California's False Advertising Law is subject to three year statute of limitations. *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 534 (N.D. Cal. 2012) (citing Cal. Code of Civ. Proc. § 338(a)). The Lanham Act does not have its own statute of limitations, so the Ninth Circuit applies the statute of limitations for analogous claims in the state in which the claim arose. *W. States Wholesale, Inc. v Synthetic Indus., Inc.*, 206 F.R.D. 271, 278-79 (C.D. Cal. 2002); *see also Aoki v. Gilbert*, 2014 WL 3689345, at *11 (E.D. Cal. Jul. 23, 2014) (applying three-year statute of limitations to false advertising claims). The relevant statutes of limitations will vary based on the claim at issue, the state in which the claim arose, and the date on which each class member's claim is alleged to have arisen, but Plaintiffs and the putative class members' claims are barred, in whole or in part, or are limited by the applicable statute(s) of limitations.

SIXTH DEFENSE

Waiver, Estoppel, Laches

105. Plaintiffs and the putative class members' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and laches.

SEVENTH DEFENSE

Third-Party Liability

106. The injuries alleged by Plaintiffs and the putative class members, to the extent any exist, were caused in whole or in part by the conduct of third parties for whom the Expedia Entities were not responsible, or through acts or omissions on the part of Plaintiffs and the putative class members.

EIGHT DEFENSE

Improper Venue

107. To the extent the putative class includes parties to contracts with the Expedia Entities, those parties are subject to the choice of forum and venue selection provisions in those contracts, which generally require that claims be brought in courts in King County, Washington. Claims by any such parties should be dismissed under Rule 12(b)(3) of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, having stated its answer and affirmative defenses, the Expedia Entities pray for relief as follows:

1. That this lawsuit be dismissed with prejudice;
2. That no class action be permitted under Fed. R. Civ. P. 23 and no class certified under Fed. R. Civ. P. 23(c);
3. For attorneys' fees and costs as permitted by law; and
4. For such other and further relief as this Court deems just and proper.

JURY DEMAND

The Expedia Entities request a trial by jury on all issues raised by the Complaint that are properly triable to a jury.

November 26, 2018

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